

PAUL G. ABERNETHY

---

MARCH 15, 1956.—Committed to the Committee of the Whole House and ordered to be printed

---

Mr. BURDICK, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H. R. 8087]

The Committee on the Judiciary, to whom was referred the bill (H. R. 8087) for the relief of Paul G. Abernethy, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The amendments are as follows:

Line 6, page 1, strike out "Abernathy" and insert "Abernethy".

Line 8, page 1, strike out "Abernathy" and insert "Abernethy".

Amend the title to read:

A bill for the relief of Paul G. Abernethy.

PURPOSE

The purpose of the proposed legislation is to pay Commissioned Warrant Officer Paul G. Abernethy, of the United States Marine Corps, the sum of \$413.39 in full settlement of all claims against the United States for a refund of the amount of expenses incurred in shipping his household effects and transporting his family from Oceanside, Calif., to Culpeper, Va.; an amount which was originally allowed him as expenses incident to a transfer overseas from a permanent station, but which was subsequently disallowed and deducted from his pay.

STATEMENT

Commissioned Warrant Officer Paul G. Abernethy was transferred to Camp Pendleton, Oceanside, Calif., from permanent duty at Camp Lejeune, N. C., by orders dated July 27, 1950. This transfer was made as a step in transferring Mr. Abernethy overseas. The report furnished this committee by the Department of the Navy states that the change of permanent-duty station effected by these orders was

from Camp Lejeune, N. C., to overseas; and in such a situation Mr. Abernethy was entitled to ship his household effects and transport his family to a destination of his designation once on this set of orders. He was reimbursed for his expenses incident to moving his family to California. However Mr. Abernethy was not sent overseas until he received new orders several months later.

When Mr. Abernethy reported to the First Marine Division at Camp Pendleton that division had an oversupply of officers, and he was transferred to Fleet Marine Force, Pacific, to organize and train additional personnel. He was advised that this duty could be considered as of indefinite duration. It was this reason that prompted him to move his family to California as indicated above. In order to move his family he took leave, returned to the east coast, and brought his family back to California.

Several months later he received change-of-station orders which ordered him to Korea. He again took leave, and moved his family from the west coast to Culpeper, Va. He was reimbursed for the expense of this move. Subsequently the Navy adopted the view that this payment should not have been made, and the amount of the payment was deducted from Mr. Abernethy's pay. The position of the Navy was that Mr. Abernethy was ordered to a temporary-duty station en route overseas when he was ordered to Camp Pendleton, Oceanside, Calif., by the change-of-station orders dated July 27, 1950, and therefore when he departed from Camp Pendleton for overseas duty he departed from a temporary-duty station, and was not authorized to effect a further transportation of his family or of his household effects at Government expense.

However the facts referred to above which are outlined in the statements appended to this report and the report of the Department of the Navy, which is also appended to the report, indicate that Mr. Abernethy was assigned duties and issued orders which indicated to him that he was fully entitled to transport his family in the manner he did. In the light of the unusual sequence of events of this case the committee feels that relief should be accorded Mr. Abernethy, and therefore recommends that the bill be favorably considered.

It has been demonstrated that an attorney has rendered services in connection with this claim, and therefore the bill carries the customary attorney's fee proviso.

---

#### SETTLEMENT CERTIFICATE

GENERAL ACCOUNTING OFFICE,  
Washington, D. C., June 4, 1953.

PAUL G. ABERNETHY,  
CWO, 012440, USMC,  
Redistribution Officer, Marine Corps Supply Depot,  
Camp Lejeune, N. C.

SIR: Your claim for refund of \$413.39, which was checked against your pay account for the reason that shipment of household effects and reimbursement for travel of dependents incident to your transfer with the replacement draft to duty overseas is not authorized, has been carefully examined and it is found that no part thereof may be allowed for the reasons hereinafter stated.

The orders of July 27, 1950, detached you from duty at Camp Lejeune, N. C., and directed you to proceed to Oceanside, Calif., reporting upon arrival to the commanding general, 1st Marine Division (reinforced), Fleet Marine Force, Camp Joseph H. Pendleton, thereat, for duty overseas. At the time of issuance of orders of July 27, 1950, it appears the function of the 1st Marine Division

(reinforced), Fleet Marine Force, was to further assign personnel transferred thereto to duty overseas and this was evidenced by your subsequent assignment to duty overseas as shown by certificate in lieu of orders dated January 8, 1951. It may therefore be seen that duty with that organization was one of a temporary nature.

It has been consistently held that the designation of a duty station as "permanent" or "temporary" in an individual's orders is not conclusive, when the facts, including the nature of duties, duration of assignment, etc., indicate otherwise. In view of the above, your orders of July 27, 1950, may not be regarded as permanent-change-of-station orders for the purpose of shipping your household effects and transportation of your dependents, but only as initiating a permanent change of station to be completed by secret orders designating the new permanent-duty station to be issued by the commanding general, Fleet Marine Force, Pacific Troops.

Inasmuch as reimbursement has been made for the shipment of household effects and dependents' travel from Camp Lejeune, N. C., to Oceanside, Calif., you are advised that Oceanside, Calif., may be considered the designated point for the shipment of household effects and your dependents' travel incident to your transfer overseas, and no further reimbursement under the orders of July 27, 1950, and certificate of January 8, 1951, is authorized.

I therefore certify that no balance is found due you from the United States.

Respectfully,

LINDSAY C. WARREN,  
*Comptroller General of the United States.*  
By H. GOLDBERG.

HOUSE OF REPRESENTATIVES,  
Washington, D. C., March 7, 1956.

HON. EMANUEL CELLER,  
*Chairman, House Committee on the Judiciary,*  
*Old House Office Building, Washington, D. C.*  
(Attention: Mr. Walter Lee.)

DEAR MR. CHAIRMAN: Attached hereto is a letter from Mr. Paul G. Abernethy whose private bill is pending before your committee (H. R. 8087).

I trust that this information, along with the evidence already in the file, may be sufficient to have the bill favorably reported.

Thank you for your attention to this matter, and with best regards, I am,

Sincerely yours,

HOWARD W. SMITH.

1137 SIRIBACHI PLACE,  
Tarawa Terrace, N. C.

HON. HOWARD W. SMITH,  
*House of Representatives, Washington, D. C.*

MY DEAR MR. SMITH: Receipt of your letter of February 27, 1956, is hereby acknowledged. However, inasmuch as enclosure (1) indicates that the entire file of my case was mailed to you by Mr. Button, I will not be able to give any specific dates of travel, etc., due to the lapse of time. The following is an account of the action to the best of my knowledge.

In 1950 I was transferred to Camp Pendleton, Calif., from Camp Lejeune, N. C., to the First Marine Division for further transfer to duty overseas. Upon arrival at Camp Pendleton, the First Marine Division found they had an overage in officers. I was then transferred for duty to FMF PAC to organize and train additional personnel. I was advised by the commanding officer that this duty could be considered indefinite. At that time I took leave and returned to the east coast and moved my family to Camp Pendleton. Several months later I received another set of permanent-change-of-station orders to Korea. I then took leave again and returned my family to the east coast before going to Korea. I collected travel allowance for my family on the change-of-station-orders to Korea. Upon returning to the States from Korea, I did not collect transportation for my family from the west to the east coast due to the fact that I had collected previously. A few months later I was checked for the travel money which I had previously been allowed on my set of orders to Korea. Therefore I did not apply for transportation on my return orders from Korea to Camp Lejeune, N. C.

PAUL G. ABERNETHY

I am attempting to recover this loss by the advice of several disbursing officers, who have advised me that I should not have been checked. I consider this only a partial payment of what it cost to move my family from the east coast to the west coast and then back again to the east coast. In the meantime I had rented my home in Culpeper, Va., and had to take steps to get the occupants to vacate my home to enable me to have a place for my family to live while I was overseas.

Your assistance in this matter is greatly appreciated.

Very truly yours,

PAUL G. ABERNETHY,  
CWO, USMC.

HIDEN, BICKERS & BUTTON

ATTORNEYS AND COUNSELLORS AT LAW

CULPEPER, VA., April 17, 1954.

Judge HOWARD W. SMITH,  
House of Representatives, Washington, D. C.

MY DEAR JUDGE: Commissioned Warrant Officer Paul G. Abernethy, United States Marine Corps, has been a resident of Culpeper County for many years and formerly worked for P. W. Fore, at the Culpeper Motor Co.

Mr. Abernethy has a claim for \$413.39 which was allowed by the disbursing officer and paid, and then upon rechecking was disallowed and taken from his pay.

Mr. Abernethy states that the only way this can be reallocated is by a short-claims bill introduced. The entire file is enclosed herewith.

Mr. Abernethy is now stationed at Camp Lejeune, N. C. His proper address is set forth on the letter of June 4, 1953, in the enclosed file. If you need any other information please contact him. Anything you can do to assist Mr. Abernethy will be very greatly appreciated by Mr. Abernethy and myself.

With kind regards, I am,  
Very truly yours,

ROBERT BUTTON.

1137 SURIBACHI PLACE, Tarawa Terrace, N. C.

Hon. HOWARD W. SMITH,  
House of Representatives, Washington, D. C.

MY DEAR MR. SMITH: In reply to your letter of January 30, 1956, this is to advise that the correct spelling of my last name is Abernethy.

Your assistance in this matter is greatly appreciated.

Very truly yours,

PAUL G. ABERNETHY,  
CWO, USMC.

DEPARTMENT OF THE NAVY,  
OFFICE OF THE JUDGE ADVOCATE GENERAL,  
Washington, D. C., July 8, 1954.

Hon. CHAUNCEY W. REED,  
Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter of May 6, 1954, to the Secretary of the Navy requesting comment on H. R. 8911, a bill for the relief of Paul G. Abernethy.

The purpose of this measure is to authorize and direct the Secretary of the Treasury to pay to Commissioned Warrant Officer Paul G. Abernethy (O12440), United States Marine Corps, the sum of \$413.39 in full settlement of his claim against the United States for a refund of expenses incurred in shipping his household effects and transporting his family from Oceanside, Calif., to Culpeper, Va., following his transfer pursuant to orders dated January 6, 1951, from Camp Pendleton, Calif., to overseas duty.

It is noted that the correct spelling, according to personnel records of this Department, of the name of the person concerned in this bill is Abernethy rather than Abernathy.

The transportation of a family and the shipment of household effects, other than a temporary-duty weight allowance, are authorized only upon a change of



permanent-duty station. The records of the Department of the Navy indicate that a change-of-station order dated July 27, 1950, directed a transfer of Commissioned Warrant Officer Abernethy from permanent duty at Camp Lejeune, N. C., to Camp Pendleton, Oceanside, Calif., for duty overseas. The change of permanent-duty station effected by these orders was from Camp Lejeune, N. C., to overseas. Camp Pendleton, Calif. constituted only a temporary-duty station, en route overseas. Mr. Abernethy was entitled to ship his household effects and transport his family to a destination of his designation only once on this set of orders. At his request he was reimbursed for his expenses incident to moving his family to Camp Pendleton, Calif. When Mr. Abernethy was transferred from Camp Pendleton for duty overseas, he departed a temporary-duty station, and, therefore, was not authorized to effect a further transportation of his family or shipment of his household effects at Government expense. Consequently, the erroneous payment to Mr. Abernethy of \$413.39 representing the expenses incurred in transporting his family and household effects from Camp Pendleton, Calif., to Culpeper, Va., on the assumption that Camp Pendleton was a permanent-duty station when in fact it was a temporary-duty station, was unauthorized, and the amount of this payment was quite properly deducted subsequently from his pay.

In connection with the above deduction it may be noted that on October 31, 1951, Mr. Abernethy's claim for repayment in the amount of \$413.39 was forwarded to the General Accounting Office, Claims Division, with a complete statement of the facts pertaining to the case. That Office, in a certificate of settlement dated June 4, 1953, advised Mr. Abernethy that his claim had been carefully examined and that no part thereof could be allowed. In applying the laws, regulations, and decisions governing the payment of travel and transportation allowances, this Department has been constrained to arrive at similar conclusions in cases analogous to that of Mr. Abernethy and such actions invariably have been upheld by the General Accounting Office whenever members of the service have lodged formal claims to recover amounts checked as overpayments. Inasmuch as it would single out Mr. Abernethy for special consideration, as opposed to many other members of the service who have had similar claims disallowed, the bill is clearly discriminatory.

In view of the foregoing, the Department of the Navy is opposed to the enactment of H. R. 8911.

The Department of the Navy has been advised by the Bureau of the Budget that there is no objection to the submission of this report to the Congress.

Sincerely yours,

IRA H. NUNN,  
Rear Admiral USN,  
Judge Advocate General of the Navy  
(For the Secretary of the Navy).

○

